K 1952

File No. O. Requisitioning / 52

Legal Department (Pt. I)

A BRANCH

A/10/7

Subject:— Opinions under the Bombay Land Requisition Act, 1948.

/ For subsequent pps. pl. see Pt. II

File No. O. Requisitioning / 52 (Pt. I)

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9/7

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The management of the Times of India had volunteered to give up the premises occupied by their Sports Club in Eruchshaw Building, Hornby Road, Bombay, in exchange of two residential flats (vide Shri Jain's letter at page 77 ante). This offer was accepted by Government. The premises of the Sports Club were accordingly taken over and allotted to Bombay State Consumers Co-operative Society Ltd. It was further decided that two flats amounting to approximately the same area and to the extent of the rental of the office premises should be allotted to the Times of India. (Vide H.M.'s Orders at page 90). The question raised for consideration is how these orders can be implemented.

2. The R.B. (Accommodation) considers that the requisitioning of any premises for the Times of India will not be for a public purpose. Under the Bombay Land Requisition Act, 1948, however, premises can be requisitioned by Government, either for a state or a public purpose. It is true that requisitioning of flats to accommodate the officers of the Times of India may not be a public purpose. But in this case, there has been an agreement between the State Government and the management of the Times of India under which on the latter giving up their accommodation in Eruchshaw Building Government should provide them with two residential flats. As the premises surrendered by the Times of India have been already taken over by Government it is necessary to provide the Times of India with two flats in exchange. The requisitioning of premises of fulfil that part of the agreement would, in these circumstances, be for a State purpose. In this view it may be possible to give effect to the decision of Government at page 90. It should, however, be clearly stated in the order of requisition that the requisitioning has been done for a State purpose, namely,

the fulfilment of the agreement with the management of the Times of India to provide two flats in consideration of the surrender of the premises of the Sports Club for accommodating the Bombay State Consumers Co-Operative Society Limited.

Sd...../23/1.

Additional Secretary to Government.

U.R. to R.D. (Accommodation), No. 1058 dated the 23rd January 1952.

DYR.

20/6.

Sa.

Local Department.

Submitted.

Please see R.D. (Accommodation) note at p. 63 ante. The question raised in these papers is whether Government can requisition and allot premises from the pool to doctors who are attached to the Wakf Hospital and K.E.M.Hospital.

Sd.....

DYR.

[redacted] 20/6.

Sc.

It is feasible to justify requisition and allotment of premises to doctors working at public Hospitals. The requisition order may state the purpose accordingly.

Sd/.....12/2.

Government of Legal Affairs.

U.R. to R.D.(Accomm), No. 2242, dated the 12th February 1952.

DYR.

20/6.

Sc.

It appears the Chairman of the Poona Leather Workers Co-Operative Producers Society Ltd. has requested the Collector of Poona to requisition Plot No.1440, in Dhorgalli, Poona for the use of the Society for producing leather goods such as chappals, sandles, boots etc., on large scale. Under section 5(1) of the Bombay Land Requisition Act, 1948, the requisition of land can be made by Government for the purpose of the State or any other public purpose. The question for consideration is whether requisition for the society for the aforesaid work can be considered as for a ' public purpose'.

The expression ' Public purpose' has not been defined in the Bombay Land Requisition Act and the interpretation of that expression would be a matter for the Court to decide. In the province of Bombay v.K.P. Advani 1950, Supreme Court Journal p.451, at p. 457 Mahajan J. Observed " No precise definition of the phrase" public purpose" can be attempted and none has been given in judicial decisions. It was however observed in Hamabai Framjee Petit v. Secretary of State for India (I.L.R. 42 I.A. 44) that in order to constitute a ' public purpose' in taking land it is not necessary that the land when taken in to be made available to the public at large; but that it include a purpose, that is an object in which the general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned." In the present case the land is needed for the Poona Leather Workers Co-Operative Producers Society Ltd. for producing leather goods on a large scale. The question that has to be considered

therefore is whether this purpose includes an object of general interest in which the community is directly and vitally concerned. In ~~xxx~~ Veerarghavacheriar v. Secretary of State I.L.R. XLIX Madras p. 230., Justice Devadoss observed thus (p.245).,

" Where the primary ~~xim~~ object is personal gain whether that be of a private ~~individual~~ individual or of a company the public benefit resulting from the action of such person or company is too remote and the purpose cannot be said to be a public purpose. Every merchant and every dealer can say that he benefits the public because he is catering or providing to the wants of the public. The merchant's first object is to make a gain for himself. The benefit that he may confer upon his constituents or patrons is ~~xxx~~ very remote. Such purposes are not public purposes."

The above observations would, therefore, apply and it cannot be said that the purpose of the society is a public purpose within the meaning of section 5(1) .

84/.....11/1.

Additional Secretary to Government.

U.R. to R.D. No. 323, dated, 11th January 1952.

DIR. 20/6. 5a.

13. Action of the R.L.A.

Government may adhere to the award made by the Collector as the recital in the award about the consent of the owners of the land m to the Collector's fixation of compensation as expressed in through his pleader is likely to be mmm accepted by the Court, even if the matter is taken to the Court.

Sd/.....9/2.
Remembrancer of Legal Affairs.

U.R. to R.D.No. 2169, dated the 11th February 1952.

DYR.
20/6.
Se.

15. Office of the R.L.A.

Having regard to the present trend of decisions, the contention of the Landlord regarding waiver of intimation in prescribed form will be upheld by the Court in which case the order of requisition will be bad as under section 6(3) of Bombay Land Requisition Act, 1948, the period of one month is to be computed 'from the date on which the intimation is received' and not from the date on which the premises became available for occupation.

From the rubber stamp on the letter intimating the vacancy (p.7ante) it appears that it was received on 20th October 1951. Controller of Accommodation may have his record properly checked. If the intimation was received on 20th October 1951, the order of requisition will be a valid order.

Sd/.....19/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom)No. 2766, dated the 20th February 1952.

DYR.

20/6.

Sd.

The Court will go into the question whether Shri Amin is homeless. It will then be difficult to justify the order. The case of Shri Amin is more of inadequate accommodation. As the matter is sure to be taken to the Court, it is advisable not to allot these premises to Shri Amin.

Sd/.....21.2

Remembrancer of Legal Affairs.

U.O. to R.D.No. 2867, dated the 22nd February 19

DIR.
20/6.
Se.

In the present case the requisitioning of the premises was made for the purpose of allotting them to the Estate Manager, Government of India Estate. Presumably this requisitioning was to be for the purpose of the Union Government. If so, the requisition order itself would not be intra vires (See R.L.A's Opinion No. 18720 dated 22nd November 1951) and is not saved by section 29 of the Requisitioning and Acquisition of Immoveable Property Ordinance, 1952 as the premises were not used nor occupied. Consequently, the question of conflict between the order passed by the Controller of Accommodation and that of the Custodian of Evacuee Property does not arise.

In the linked case it appears that the room was requisitioned under section 6(4)(b) of the Bombay Land Requisition Act and allotted to the first informant; but the occupant of the room, a displaced person, approached the Custodian of Evacuee Property to regularise his position. Accordingly by his letter dated the 2nd March 1951 the Custodian of Evacuee Property confirmed the occupation of the displaced person, though the premises were requisitioned on 25th January 1951. The question raised for the R.L.A.'s consideration is which of the two orders, that is to say, whether the requisitioning order or the order of the Custodian would prevail, particularly when the requisitioning order is of a prior date.

Section 4 of the Administration of

of Evacuee Property Act, 1950, provides that the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. When the property vests in the Custodian under section 8, he has the power to take possession of such property under section 9. Under section 10(2)(f) the Custodian has power to transfer in any manner any evacuee property notwithstanding anything to the contrary contained in any law or agreement relating thereto. Under section 12(2) he has power to vary or cancel leases or allotments of the evacuee property. It is apparent from these provisions that the order passed by the Custodian in respect of the property vesting in him will prevail over any order of requisition passed under the Bombay Land Requisition Act even the latter order is of a prior date.

Sd/.....19/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Through) C.E.P.No. 2741 dated 19th February 1952.

DIR.

20/6.

Sd.

Office of the R.L.A.

The requisitioning of the premises of Chri Udit Gopal of Harare, Asian Photos Portrait, Press and Commercial Photographers as would not be permissible under the Rowley Land Requisition Act, 1968 as it would not be for the purposes of the State or any other public purpose even though the firm has been carrying on the official assignments of the Government of Rowley.

Ed/.....20/2.

Remembrancer of Legal Affairs.

U.I. to R.D.No. 2834, dated the 21st February 19[illegible]

DMR.

20/6.

[illegible]

Office of the R.L.A.

In this case not only the first allotment order cannot be given effect to but the requisitioning cannot be continued for the public purpose which is mentioned in order. As the purpose is to be changed, it would be advisable to formally derequisition the premises and requisition them for a State purpose for which they are to be requisitioned now i.e. for housing a Government Servant. As advised by the R.L.A. there should be always be an interval of two or three days between the requisition order and allotment order.

Sd/.....26/2.

Examiner of Legal Affairs.

U.O. to R.D.(Accommodation) No. C-89, dated the 26th February 1952.

DTR.

20/6

So.

27. Office of the R.L.A.

It is doubtful whether providing accommodation for a Co-operative Society is a public purpose although it is possible to argue that in the case of a Co-operative Society there is no profit motive and the predominant motive is to encourage the habit of thrift and Co-operation and thereby benefit the public. However the provisions of the Land Acquisition Act furnish analogy which is likely to be construed against us. Moreover, the proposed requisitioning in order to accommodate a Co-operative Society during the pendency of an ejectment suit may be successfully challenged on the ground of want of bona fides.

Sd...../

Remembrancer of Legal Affairs.

U.R. to D.D.No.217-Confl. dated 27th February 1952

Original filed in S.Surat.5/51.

DTR.

5e.

20/6.

It appears from the requisitioning Order dated 24-1-1951 at page 5 ante that the flat was requisitioned for a public purpose namely, for housing a Government servant; and the allotment Order at page 7 was made in favour of the Commissioner of Police. Reading these two orders together it is apparent that the requisitioning of the flat was done for housing a person belonging to the Police Force, Bombay. Shri Shm Sohanlal to whom the flat is now proposed to be allotted is a Central Intelligence Officer of the Government of India. No requisitioning of any premises can be done under the Bombay Land Requisition Act, 1948, for housing any servant of the Central Government. Consequently, the flat cannot be allotted to Shri Sohanlal.

Sd/.....21/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.)No. 2822, dated the 21st February'52.

DYR.

20/6.

Se.

There appears no legal objection to requisition part of the premises occupied by the Podar family if it could be proved that the portion was sub-let to them. 2 It is, however, for R.D. (Accommodation), to be satisfied whether the presumption about sub-letting the premises to the Podar family can be substantiated. Shri Madanlal Podar x has been all the while contending that he was occupying part of the premises as a guest and Shri Shambhu Dayal, Commissioner of Income-tax, and his son have been also contending that Shri Madanlal Podar was so occupying the premises The mere fact that Shri Madanlal Podar was occupying the premises for over 2 years would not raise any presumption of sub-tenancy. A person occupying part of the premises may be so occupying either as a licensee or as a sub-tenant, and the fact of payment of any rent for such occupation is immaterial so long as the occupation of the premises can be proved as a licensee. The distinction between a licence and a lease has to be borne in mind while deciding whether a person is occupying as a licensee or as a lessee. A licence does not create any interest in the estate or property to which it relates while a tenancy does create such interest. The main distinction is that a licensee is not given exclusive possession of the premises while a tenant is given exclusive occupation. The materials on record do not appear x quite sufficient to decide whether Shri Madanlal Podar was occupying part of the premises as a licensee or as a sub-tenant. If Government wants to requisition the vacant part of the premises occupied by Shri Madanlal Podar it appears necessary that Government should be in possession of convincing evidence to prove that he was occupying the said premises not as a licensee but as a sub-tenant.

S4...../21/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accomm).No. 2879, dated the 22nd February 1952.

DYR. 20/6. 52.

It appears that the services of Shri Sen, a Professor in the Government College, Kolhapur, have been lent to the University of Bombay (Department of Chemical Technology). The question raised for the R.L.A's consideration is whether it would be for a public purpose to requisition premises for housing Professor Sen.

2. The requisitioning of a building under section 5(1) or of vacant premises under section 6(4)(a) of the Bombay Land Requisition Act, 1948 can be done only for a State purpose or a public purpose. The requisitioning of premises for housing Professor Sen would certainly have been valid had he continued to be in Government Service, for housing of a Government servant is a public purpose. In the present case, Professor Sen is in foreign service that is to say in the service of the University of Bombay as a lent hand. But a Government servant who has been lent for foreign service does not cease to be a government servant although provisionally he is paid by the foreign authority under whom he serves. Assuming that Professor Sen cannot be considered a Government servant so long as he is in the service of the University, it appears that the requisitioning of premises for housing him would still be a public purpose, for in the Municipal Corporation of Bombay vs. Ranchhoddas (27 Bom.L.R.1130) it was held that to acquire land for the purpose of building quarters for municipal servants is a public purpose and there appears no reason why the same principle should not be extended to the servants of the Bombay University.

In the circumstances, it appears that there would be no legal objection to requisitioning the premises for housing Professor Sen even though his services have been lent to the Bombay University.

Sd...../2.

Additional Secretary to Government

U.R. to R.D.(Accommodation)No.1672, dated the 2nd February 1952.

DYR.

20/6.

5e.

Under the proviso to section 5(1) of the Bombay Land Requisition Act, 1948, on building or part thereof wherein the owner, the landlord or the tenant, as the case may be , has actually resided for a continuous period of six months immediately proceeding the date of the order shall be requisitioned under this section. Under sub-section(2) Government has to make a declaration that the owner, ~~thank~~ landlord or the tenant, as the case may be, has not actually resided in the building for a continuous period of six months immediately preceding the date of the order. It is true that the flat in question has remained vacant since 22nd ~~W~~ February 1951, on which date it was sealed by the Custodian of Evacuee Property on the assumption that it was an evacuee - property. But it is necessary that the flat to be liable to be requisitioned under sub-section (1) of section5, must not have been actually resided in for a continuous period of six months immediately preceding the date of the requisition order. The fact that no one resided in the flat since 22 nd February 1951, when it came to be sealed will not avail for purposes of section 5. For, the non-residence was forced upon the party who had the right to reside, and besides the order sealing the flat was itself set x aside in appeal. It will not, therefore, be possible for Government to take advantage of such non-residence for making a declaration under section 5(2) which is an essential pre-requisite for making an order under section 5(1).

Sd/.....13/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.)No. 2377, dated the 13th February 1952.

DYR.

20/6.

Sa.

Office of the L.A.

Please see L.L.A . Opinion at p.45 of the R.D. file.

Since the above opinion of the R.L.A. the Nurses residing in the hotel have organised themselves into a ~~Co-operative~~ Cooperative Society and desire that the tenancy of premises may be transferred from the Mrs. Mc'Donnell to the name of the Cooperative Society. The land-lord has no objection.

The fact that the nurses who are lodgers in the hotel have organised themselves into a Cooperative Society would not be any justification for depriving Mrs. Mc'Donnell of her tenancy rights. There is no provision in the Bombay Land Requisition Act, 1948 for such a transfer.

The view taken by Revenue Department(Accom) is correct.

Sd/.....5/3.

Conservancer of Legal Affairs.

/

U.O. to R.D.(Accom.) No. 3627, dated 1st March 1950.

DVM.

21/3.

So.

41. Office of the R.L.A.

The offence committed by the ~~[illegible]~~ landlord is non-cognizable and therefore the police will not be able to investigate it without the order of a Magistrate. As complaint will, therefore, have to be filed before a Magistrate and the case can be filed by an officer of Government authorised in this behalf. On such complaint being filed the Magistrate will take cognisance of the case under section 190(1)(a) of the Cr.P.C. and proceed to issue process.

Cd/.....4/3.

Remembrancer of Legal Affairs.

U.O. to P.D.(Accom) No.3506 dated the 5th March 1952.

DYR.

21/6.

5e.

There is no objection to withdrawing the present order of requisition and issuing a fresh order of requisition for housing a Government servant as proposed.

As the position is now been presented already any action in that behalf should be taken in consultation Messrs. Little & Co. particularly with a view to keep the costs of as low as possible as in any event there will be an order against Government for costs.

Sd/.....18/3.

Solicitor to Government.

U.O. to R.D.(Accom). No. 4213, dated, 19th March 1952.

DJR.

21/6.

Sc.

Office of the J.A.G.

If an application is filed in the High Court and no injunction is granted by the Court the enforcement of the requisition order need not be held up. It is only when an interim injunction is granted that the order need not be enforced. There is therefore no quite justification for withholding the enforcement of the order merely because an application has been filed in the Court..

.....27/3.

Secretariat of Legal Affairs.

U.O. to H.Q.(Accom). No. 4645, dated 27th March 1952.

DT.
21/6.
5d.

Office of the E.L.A.

The requisition made in this case for a union Government Officer could have been held valid under section 23 of the Requisitioning and Acquisition of Immovable Property Ordinance, 1952(Ordinance III of 1952) issued by the Central Government on the 25th January 1952 if the Officer of the Postal Department had used or occupied the requisitioned premises. In this case as the premises were not occupied by the allottee on the 25th January 1952.i.e. the date of the commencement of the Ordinance, the requisitioning order and the allotment Order are bad in law and the premises may therefore be derequisitioned.

Sd/.....29/2.

Remembrancer of Legal Affairs.

U.O. No.to R.D.(Accommodation), No. 3264, dated the 29th February 1952.

DTR.

21/6.

So.

Bom. Land Requisition Act, 1948.

Section 6(3)

Exchange Certificate.

It does not appear that any action can be taken either against Shri M.L.Desai or Shri P.N.Bhagat. The permission for exchange of the premises was apparently granted under sub-section (3) of section 6 of the Bombay Land Requisition Act, 1948. That provision prohibits a landlord except with the permission of the State Government, to let, occupy or to permit to be occupied premises becoming vacant before giving the intimation thereof to Government. It is not the case here that the landlords have infringed any provisions. The only contention against Shri Desai is that, as stated by him in his joint application with Shri [illegible] Shri Bhagat dated the 23rd December 1950, he has not resided in the premises at Goregaon for the last preceding six months but was staying in Greater Bombay. The relevant provisions under which action can be taken against him would be sections 177 and 182 of the Penal Code. Shri Desai was not legally bound to furnish true information of his occupation of the premises at Goregaon within the meaning of section 177; neither can it be said that he knew or believed that information of his occupation of the premises at Goregaon to be false, when tenancy of the said premises stood in his name. The landlord thereof has stated that he was staying in the said premises and that he would have no objection for the change of tenancy. In these circumstances it would be difficult to bring home the offence either under section 177 or 182 of the Indian Penal Code.

P.T.O./.....2/4.

Remembrancer of Legal Affairs.

U.O. to R.D.(Annexe)No.5260 dt.8th April 1952.

mrm.21/6. 4a.

51/52.

R.D.No.5456 dt.17.3.52.

Submitted.

Please see facts states in R.D.(Accom). note at p.307 ante. The flat on left wing of Nathalal Bhuwan, Vithalbhai Patel Road, requistioned under sec. 5(1) of the Land Requisitioned Act and ther on tenant's representations was de-requistioned. The premises after fresh enquiries were re-requistioned on 6.12.50 and allotted to Shri Mehta. An order under sect. 9A of the Act was issued making the allottee Shri Mehta, the tenant of the land. On 23.8.51 an order was issued in continuation of the requisition order dated 6.12.50 declaring that the premises were requisitioned for a public purpose viz- for housing a person without accommodation. In the meanwhile Shri Doshi the tenant had filed a petition in the High Court which held the order invalid but did not grant the relief sought by him as the order under sect. 9-A dated 2.3.51 was not challenged. The petition was therefore dismissed. Shri Doshi has now given a notice under sect.80 of his intention to file a suit for recovering his premises.

2. Some of the important points raised in the notice are (1) that the premises were not in his occupation on the date of the second requisition order (2) that housing a person without accommodation is not a public purpose (3) that by reason of Art. 372 of the Constitution the Act has ceased to be in force after 31.3.1950 and that sect.2 of the Bom. Land Requisition (Amendment) Act whereby

for figures '1950' the figures '1952' were substituted in sect.3 of the Act is ultra vires. Art. 372 and (4) sec.9(A) is ultra vires the powers of the State legislature. The High Court has already held in the case of Heman Alreja Vs.State of Bombay that the provisions of the Bom.Land Requisition Act are valid. The points raised in the notice are not substantiable and the suit when filed would be defensible. The papers may ex be seen and returned.

Sd/....25/1.

The position as it stands today point No.(2) is not defensible.

I understant that of late no notices under Sec. 9-A are being issued now as its valadity is in doubt. Is ther any opinion to that effect. Please put up:

Sd/.....25/3.

Submitted with a copy of opinion No.9716 dated 20-6-52 Slip A. The Opinion referred to therein could not traced as the file is put up by ABr.

Sd.....12/3.

DYR.

21/6.

Sc.

Position regarding order under section 9-A of Land Requisition Act, 1948, is doubtful but is also doubtful whether it would be open to the tenant to challenge if if the previous requisition order x is valid. In any case the Department is of the opinion that nothing can be done at this stage. No action is therefore necessary. (Vide Rule 67(4) of the Law Officer Rules).

Sd/.....16/4.

Remembrancer of Legal Affairs.

G.P. to P.D.(Accom). No. 5745, dated the 17th April 1952.

DYH.
21/6.
5c.

Legal Department

The opinion given in the Times of India's case, in which the premises exchanged were required for a public purpose, does not apply to the present case. Further what Government had agreed in the present case was to derequisition the two flats in favour of Shri Kundandas Rewachand. Government having done this nothing further remains to be done. If landlord adopts proceedings against Shri Kundandas Rewachand on the ground that he has no title to the flats, Government cannot do anything in the matter. Question of re- equisitioning the flats and allotting them to Shri Kundandas Rewachand is out of the question.

d/.....25/4.

Additional Secretary to Government

U.R. to D.D.(Accom), No.6367, dated the 25th April 1952.

DTN.

21/6.

5c.

Flat No.6 in Mayfair.-

After this flat was derequisitioned by the Military authorities and possession was handed over to the landlords, they ~~x~~ rented this flat to Indian Overseas Airlines. In June 1949 the Airlines applied for an exchange of this flat with a small double room in Wasiamul Estate at Grant Road owned by Shri Kundandas. This exchange was refused as it was on unfair basis and the parties ~~x~~ were informed accordingly. It ~~x~~ seems thereafter the Airlines vacated the flat. As Shri Kundandas was found in unauthorised occupation, the flat was requisitioned by Government under section 5(1) of the Bombay Land Requisition Act, 1947. Shri Kundandas had not given physical possession to the ~~x~~ Government but only formal possession was given on the 26th March 1951. Thereafter this flat was allotted to Shri P.V.Dixit but he refused the allotment and possession of the flat was not taken by Government at any time. When the premises were derequisitioned on the 26th October 1951 Kundandas ~~x~~ was continuing in possession of it and there was therefore no question of handing, over possession to anybody else. In these circumstances, it can be urged that the contention of Messrs. Mulla and Mulla the Solicitors of the landlords at page 239 that it was the duty of Government to give vacant possession of the flat to the landlords is no correct. The provision of section 9 of the Bombay Land Requisition Act apply to land or building of which Government had taken possession. However, the fact remains that formal possession was given to Government.

Flat No.7 in Mayfair.-

Flat No.7.- Shri Kundandas was taken up as a tenant of this flat by the landlord unauthorisedly in 1947 when it was already under requisition under the Defence of India Rules. This position is admitted by the landlords in their letter dated the 15th January 1948 at page 235 of file No.2 S C 467-

467-3-5/8. The Collector of Bombay passed an order on the 31st December 1947 continuing it under requisitioning under section 5 of the Bombay Land Requisition Ordinance. Against this order Shri Kundandas and his firm filed a petition to Government but ~~also~~ ultimately the matter was decided in favour of Government. Government derequisitioned these premises thereafter on the 19th November 1951 but in this case also Kundandas was all along in possession and Government had not enforced the requisitioning order. Consequently as in on derequisitioning there was no question of handing over possession of this flat to anybody. In this case the landlords themselves had rented this place to Kundandas and therefore the success of the proceedings instituted by the landlord for ejecting him, seems doubtful.

In respect of both these flats, it would be premature to express any opinion until it is known whether Government is made a party or not and the grounds that are urged against Government is made a party. It would be possible to contend that Government could not have disturbed Shri Kundandas in his possession in which he may have rightfully continued as against the landlord; and that his action in giving formal possession was itself intended to maintain himself in actual possession. As he was secure in his ~~x~~ possession, he placed two other flats at the disposal of Government which circumstance had no connection with his continuance of possession. Messrs. Dabholkar Jetharam, Solicitors may therefore be asked to defend their clients case independently of the compromise arrived at with Government. However Government may give them, if necessary, an informal assurance that if at all their client is thrown out of possession Government would consider providing them with accommodation elsewhere.

Sd/.....20/2.
Remembrancer of Legal Affairs.

U.O. to R.D.(Accommodation), No.G-78, dated the 20th February 1952.

DTR.

Office of the R.L.A.

It is true that while asking for permission to take the flat on caretaker basis Dr. Irani did not mention anything about his being the landlord's agent. But Shri Savara understood him that way and so also the Revenue Department (Accommodation) and it was because of this that in the letter of permission it was made clear that Government were not liable for compensation during that period. A copy of this letter was sent to Dr. Irani but he kept quiet and this attitude of his should be construed to mean that he accepted the position regarding the compensation. Not only that but after vacating the flat he claimed compensation for the kitchen in which Shri Savara's things were locked up. Thereafter Dr. Irani wrote to the Controller of Accommodation that he has received from Shri Savara a cheque which was only for part payment and as he had no power to accept any part payment he was returning the cheque to the Controller of Accommodation. He also suggested that in view of these arrears Shri Savara should be asked to deposit future rents with the R.D. (Accommodation). He again wrote to the compensation Officer for the entire rent. This letter he signed as the constituted attorney of Shri A.K.Irani. From this correspondence it will be seen that Government were not wrong in considering him as the landlord's agent. It is true that A.K. Irani never wrote to to the Department for a caretaker permit, but his son-in-law always acted for him and therefore Government may stick to the stand they have so far taken that the caretaker arrangement was in favour of the land lord and no compensation is payable for that period.

The caretaker has removed some fittings, bathtub etc. from the flat. As on derequistioning, the flat is to be restored as far as possible in the same condition in which it was on the date on which it was take possession of by or

on behalf of Government under section 9(2)(a) of the Bombay Land Requisition Act, Government may adhere to their contention that Dr. Irani removed the things as landlord's agent. For loss of Shri Savara's articles he may take such legal action as he may be advised to take.

Sd/.....25/3.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation), No.4533, dated the 26th March 1952.

DYR.

21/6.

5c.

Attention is invited to the judgment of Tendolkar J. in the case of Hasanuddin J.Dhimani v.State of Bombay where the whole question of public purpose has been considered. Appling the broad tests therein adopted for determining what is a public purpose, it cannot be said that requisitioning premises for a privately owned newspaper would be a public purpose. No principle can be evolved which will be applicable to a class of such cases, and thus on that ground also requisitioning for this particular newspaper would be discriminatory and, therefore, unconstitutional.

Sd.....5/5.
Remembrancer of Legal Affairs.

U.R. to R.D.(Accomm), No. 711/6, dated 6th May 1952.

DYR.
21/6.
Se.

In the preamble of the notice issued by the Collector, Bombay Suburban District under section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, it is stated that the lands at Chembur were requisitioned under Rule 75A of the Defence of India Rule read with Government of Bombay Home Department (Poll.War) No. SHD 1741, dated the 29th May 1942. From the requisition Order No. WAR-234, dated the 20th July 1944, it appears that the lands were requisitioned by the Collector as a delegatee of the Central Government as the delegation notification mentioned in the requisitioning order is notification of the Government of India, Defence Co-ordination Department, No.1336/DS/1/42, dated the 25th April 1942. The Home Department should verify and if the lands are found to be requisitioned under the authority of the Central Government then R.L.A's opinions quoted by the Home Department would apply and the acquisition under the authority of the State Government who were ~~made~~ not the " appropriate Government" within the meaning of section 5(2) read with section 2(1) of the Requisitioned Land (Continuance of Powers) Act, 1947, would be invalid (Please see R.L.A. 's opinion No.1753, dated 30-1-51).

Sd/ ....24/4.

Remembrancer of Legal Affairs.

U.R. to H.D.No. 6347, dated the 25 th April 1952.

DYR. 21/6. 5o.

As an order under section 9A of the Bombay Land Requisition Act,1948, has been made by Government in this case, under sub-section (2) of that section, the premises are to be deemed to have been released from requisition. As the relationship of landlord and tenant is established between the allottee and the landlady in this case, the Revenue Department (Accommodation) cannot now take any action to transfer the tenancy in the name of Shri Gidwani's mother. The landlady it seems has refused to accept rent from Shri Gidwani's mother on the ground that she does not recognise her as the tenant entitled to the occupation of the premises. Shri Gidwani's mother has stated in her letter at p.217 ante that she has learnt that the landlady has filed a suit against her son. She may be asked to defend that suit. In the meantime, she may continue sending rent to the landlady and not to the Revenue Department (Accommodation) as that Department is not now concerned in any way with these premises and if the land lady ultimately succeeds in evicting Shri Gidwani's mother, Government may then consider the question of providing accommodation to her.

Sd/.....29/2.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation),No.3383, dated the 1st March 1952.

DYR.

21/6.

Se.

A transaction of hire-purchase is a kind of bailment which differs from a contract of sale in that, even though the hirer or the bailee pays money in consideration of using the goods, still the ownership continues with the seller. Whether a particular case is a contract of hire or a contract of sale will depend on the terms of the contract. The test usually applied is whether the person has the right to return hte gedds and put an end to the hire. The effects as regards third parties are far-preaching because, if the decument is construed as a sale, the so-called hirer will be in a position to make a valid sale or pledge of the articles and give innocent third parties a good title, whereas, if it is only a hire, third parties,however bona fide, will get no title (see Abdul Kadir v. Watson 1930, a Rangoon 236; Iyer's law of Contracts, pp. 461-62). Under section 11(2) of the Bombay Land Requisition Act, Government has the right to remove or cause to be removed or dispose of by public auction any property remaining on such land. This provisions does not mean that the property or the sale proceeds thereof would vest in Government. Consequnetly, if the property of Sardar Ahluwalia found on the premises is to be disposed of, Government will have to credit the sale proceeds thereof to the account ~~xg~~ of Sardar Ahluwalia. If the furniture found on the premises is found to have been taken by Sardar Ahluwalia on hire-purchase agreement, the auction purchaser ~~xxxxxxx~~ would get no title to the furniture. Consequnetly, the sale of such furniture would be of no use. If Government is satisfied that the furniture found on the premises

was taken by Sardar Ahluwalia on hire- purchase agreement, it may be returned to the Company from whom he had taken on hire- purchase agreement, on an indemnity bond being executed by the Company.

Sd.....2/4.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.) No.5065, dated the 2nd April 1952.

DYR.

21/6.

5e.

The gurport purport of the judgment of Tendolkar J. in Misc. Application No. 347 of 1950 seems to be that under the Bombay Land Requisition Act, 1948 premises can be requisitioned for a servant of the Union if that servant discharges functions which are of vital interest to the State Government. Membership of the Advisory Committee of the Secretariat aquarcmal canteen cannot be considered as of vital interest to the State. Such a member cannot therefore be treated on a part with the State Government servants and premises cannot be requisitioned for him under the Bombay Land Requisition Act. Besides in view of the fact that the Government of India have now issued x an Ordinance being Ordinance III of 1952 to provide for requisitioning of property for the purpose of the Union, it is doubtful whether it would be x competent for the State Government to requisition premises for Union purpose even if such purpose is of vital interest to the State.

Sd/.....25/3.

Remembrancer of Legal Affairs.

U.B. to R.D.(Accommodation), No.4534, dated the 26th March 1952.

DYM.

21/6.

Se.

Office of the R.L.A.

It appears that the premises in this case were requisioned under the Defence of India Rules and were continued under requisition under the Requisitioned Land(Continuance of Powers) Act, 1947. After 31st March 1951, they continue subject to requisition by virtue of the Bombay Act I of 1951. Even if an order under section 7 of the Bombay Land Requisition Act, 1948 is issued it may not be possible to take possession of the premises und r section 11 of that Act as section 7 is not specifically mentioned in section 11. In these circumstances the only course open is to file an eviction suit in the Small Causes Court.

Sd/.....15/5.
Remembrancer of Legal Affairs .

U.R. to M.C.'Opinion No. 7939, dated the 13th May 1952.

DYR.
21/6.
Se.

In this case as the premises were not requisitioned within a period of a one month from the date on which the intimation was received, the landlord had the right to occupy the premises or to permit the premises to be occupied. The landlord has stated that his son has occupied the block. On 11th March 1952 when the Inspector went to see th premises he found the premises unoccupied but being repainted. What the Inspector meant by the word 'unoccupied' was perhaps that nobody was in actual residence in the flat. The premises cannot be said to be vacant only because nobody was actually resid'ng there. Occupancy of homestead may be by means other than that of actual residence. In this case the premises were being repainted which showed that the son had taken possession of the flat and was getting it renovated before he actually shifted there. In these circumstances it would be difficult for Government to lead evidence for the purpose of establishing the fact that the flat was vacant. The requisitioning order is not therefore likely to be upheld in a Court of Law.

Sd.....12/4.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation), No.5543, dated the 14th April 1952.

DYR.

21/6.

Se.

In his opinion No. 11208, dated the 29th November 1943 R.L.A. has shown the distinction between requisitioning under section 5(1) and requisitioning under section 6(4) . Under section 5(1) land can be requisitioned and land under section 4(1) includes buildings, whereas under section 6(4) what can be requisitioned is premises as defined in section 4(3). Any building which is not acutally resided in for a continuous period of 6 months can be requisitioned under section 5(1) and such building need not fall under the definition of premises. It is not therefore necessary to see whether it was let or intended to be let. In the requisitioning order in this case the word 'premises' has been used but only because that word is used it would not be necessary that it should carry the meanin assigned to it in the Act. It is loosely used as meaning a building. The requisitioning in this case under section 5(1) is therefore valid.

The Revenue Department(Accommodation) is advised advised to use the word 'building or part of the building' instead of ' premises' in all their orders under section 5(1) relating to building or parts thereof

Sd/.....4/2.

Additional Secretary to Government.

U.R. to R.D.(Accommodation), No. G- 56, dated the 5th February 1952.

DYR.

21/6. Se.

Office of the R.L.A.

Section 8A of the Bombay Land Requisition Act, 1948, provides:

"Where any premises are requisitioned or continued under requisition under this Act, the State Government may, ~~xxxx~~ subject to any agreement entered into by the appropriate Government with the landlord of the premises, whether such premises are requisitioned or continued under requisition either before or after the coming into force of the Bombay Land Requisition (Amendment) Act, 1950, by order in writing direct him to execute such repairs as shall in its opinion be necessary or sufficient to keep~~x~~ the premises in a good and tenantable condition, and as may be specified in the order, within the time mentioned therein. If the landlord fails to execute such repairs, the State Government ~~xxxxxxxxxx~~may cause such repairs to be executed at the expense of the landlord and the cost the reof may, without prejudice to any other mode of recovery be deducted from the compensation payable to the landlord."

Under this provision the landlord is liable to execute repairs unless there is any agreement to the contrary. It is common ground that there is no formal agreement on this subject. Reference is made to ~~x~~ condition(3) of the Requisition Order No. P.G. 29 dated the 30th July 1946. That condition reads as follows:

"The property shall be restored as far as possible in the same condition in which it

was on the date which the Chief Secretary to Government, Political and Services Department was put in possession of it and if the property has deteriorated, compensation shall be paid in respect of the deterioration. The delivery of possession of the property shall be in the manner laid down in Revised Section 19-B of the Defence of India Act, 1939(XXX of 1939)".

It is apparent that this condition has application only to the question of restoration after the requisition comes to an end. The deterioration therein referred to is deterioration noticed at the time of the delivery of possession. This condition has no relevance on the question of repairs especially in view of the specific provision made in section 6A. That provision alone can govern the quesion of repairs. It will be competent for Government to call upon the landlord to execute the repairs and if he omits to do so then to follow the procedure laid down in section 6A.

Sd/.....26/5.

Remembrancer of Legal Affairs.

U.O. to H.D.(Accommodation) No.2069, dated 28th May 1952.

DNR.

21/6.

Sd.

Section 6(2) of the Bombay Land Requisition Act, 1948, provides that the intimation shall be given within seven days of the premises becoming vacant or becoming available for occupation. For the purposes of section 6 premises which are in the occupation of the tenant, as in this case, shall be deemed to be or become vacant when such tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise. The landlord's letter and intimation in the prescribed form are dated 10th January 1952, and the vacancy is reported to have occurred on 31st December 1951. On his own showing, therefore, the intimation was beyond the period prescribed by sub- section (2) of section 6 of the Act, and as such it cannot give rise to any right in the landlord to let the premises after one month of that intimation on the ground that Government took no action during that month. The implied right under sub-section (3) of section 6 can come into play only when the intimation which is the foundation of that right is given within the statutory period. Notice given beyond that period is no notice at all at and cannot become the foundation of any right under sub-section (3). Moreover, a in the prescribed form it is stated by the landlord that the reason for vacating the premises was that the tenant was leaving India, whereas the accompanying letter says that the tenant was still in Bombay, but that he was not occupying the premises and that in the flat the landlord found utter strangers who did not possess any right to stay there. The landlord requests the Department to take necessary action in the matter. It is, therefore, not an intimation so much of a vacancy which was arisen on the termination of the tenancy or on the tenancy rights being assigned or transferred to other

other persons, but a report by the landlord of unauthorised occupation by utter strangers, and the request for the Department to take action is naturally action for ousting these utter strangers. Such intimation is not an intimation of the kind contemplated by sub-section (2) of section 6, the very object of which section is to tell Government that the premises have actually become vacant, are now in the power of the landlord, and that unless Government requisition them, he would let them out to others. Finally, the fact that the landlord later on put men of his own choice in the premises shows that he must have come to some arrangement with those who were occupying the premises and whom he called utter strangers. When he got rid of the utter strangers, the premises became vacant in the true sense, and it was then his duty to report that vacancy to Government before putting his own nominee as a tenant.

2 . On all these grounds Government would be justified in ignoring the so- called intimation given under sub-section (2) of section 6 and proceeding to requisition the premises under sub-section (4) of section 6 on gr the ground that no valid intimation has been received, and that this is a case of a suppressed vacancy where a landlord has unauthorisedly put his own nominee. However, a prosecution or even a threat of prosecution would not seem expedient.

Sd...../9/5.
Remembrancer of Legal Affairs.

U.R. to H.D.(Accom). No.4812, dated 20th May 1952.

DH.
21/5.

Office of the R.L.A.

Since the third floor of building No.180/182 at Shaikh Memon Street was not let or intended to be let by the landlord, Shri Ranjitlal Nagardas, nor any rent is charged in respect of the transfer or assignment incidental to the sale of the business as a going concern, it would not be possible to requisition the said premises under section 6 of the Bombay Land Requisition Act, 1948.

Under section 5(1)premises can be requisitioned only if it has been resided in for a continuous period of six months immediately preceding the date of the order. What is necessary to bar requisition is residence in the premises for a continuous period of six months. A person using the premises merely for rest and work cannot be said to be residing therein for what is necessary is actual as distinguished from constructive residence (cf.R.L.A.'s opinion No. 8444, dt.2-9-48). In his statement before the Inspector the landlord stated that "the other room is being used by me, my son-in-law and my two daughters. I am also putting up at 194 Shaikh Memon Street, 5th floor." From the first paragraph of his statement, it is, however, clear that the landlord was carrying on business on the third floor of his house No.180/182 and his statement that the room was used for his residence, is not correct. Had he been actually residing in the room as alleged, he should have produced ration cards in support of his contention. On the contrary, the Inspector states that " He produced the ration card of his son-in-law which is issued recently at the said address." It is, therefore, clear that the landlord did not actually reside in the room on the third floor of House No. 180/182 but as stated by the Inspector at 194 Shaikh Memon Street. The proper procedure would, therefore, be to hold an inquiry under section 5(2 and then decide whether he had not actually been residing in one of

P.T.O.

TH premises for a continuous period of six months before requisitioning such premises (Cf.E.L.A.'s No. 7373, dt.5-8-48)

Sd/.....22/5.

Remembrancer of Legal Affairs.

U.O. to R.D.Accommodation No. 8576 dated th 22nd May 1952.

DTR.

21/6.

Se.